

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Royal Dutch Shell plc, N.V.
Koninklijke Nederlandsche Petroleum
Maatschappij (Royal Dutch Petroleum
Company), and The “Shell” Transport and
Trading Company, p.l.c. and Shell California
Pipeline Company LLC Pursuant to P.U. Code
Section 854(a) for Expedited, *Ex Parte*
Authorization to Transfer Control of Shell
California Pipeline Company, LLC

Application 05-05-026
(Filed May 26, 2005)

OPINION APPROVING THE APPLICATION**I. Introduction**

This joint application is filed by Royal Dutch Shell plc (Royal Dutch Shell), N.V. Koninklijke Nederlandsche Petroleum Maatschappij (Royal Dutch Petroleum Company, hereafter Royal Dutch), The “Shell” Transport and Trading Company, public liability company (Shell Transport) and Shell California Pipeline Company LLC (Shell California, and collectively with Royal Dutch Shell, Royal Dutch and Shell Transport, the applicants) pursuant to Public Utilities Code (P.U. Code) Section 854(a) requesting authority for a technical transfer of control of Shell California due to restructuring of its ultimate parent companies, Royal Dutch and Shell Transport, which are being unified under a single parent company, Royal Dutch Shell.

Shell California is a common carrier intrastate oil pipeline company, subject to the Commission's jurisdiction pursuant to P.U. Code Sections 216 and 228. Shell California is one of numerous companies, referred to as the Royal Dutch/Shell Group of Companies, in which Royal Dutch and Shell Transport, either directly or indirectly, own investments. Shell California is indirectly owned by Royal Dutch and Shell Transport. Royal Dutch Shell will become the parent company of Royal Dutch and Shell Transport. As a result, Royal Dutch Shell will indirectly own each of Royal Dutch's and Shell Transport's ownership interests in the Royal Dutch/Shell Group of Companies, including the indirect ownership of Shell California. Under P.U. Code Section 854(a), "[n]o person or corporation, whether or not organized under the laws of this state, shall merge, acquire or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission." Applicants assert that while the restructuring will not change the relative ownership of Shell California's ultimate shareholders or the day-to-day management or operations of Shell California, under Commission precedent, the proposed restructuring will result in a technical change in control over Shell California which requires Commission approval.¹ As a result, applicants have filed this application for approval of a change in control of Shell California. As discussed below, this request is made in connection with the restructuring that is expected to complete in July, 2005. Applicants state that while every effort has been made by the applicants to file this application promptly, due to the

¹ See D.03-06-069, *Application of Wild Goose Storage, Inc. for Review under Public Utilities Code Section 851, et seq. of the Transfer of Indirect Control*, mimeo at 10.

complexities and logistics associated with Royal Dutch, Shell Transport, and Royal Dutch Shell being international companies and because some of the information required for this application had to be obtained from Europe, the applicants were unable to file earlier.

II. Identification of Applicants

A. Shell California Pipeline Company LLC

Shell California is a Delaware limited liability company. Shell California's principal place of business is located in Carson, California. Shell California owns and operates several pipelines transporting crude oil, feedstock, gasoline, jet fuel, and other petroleum products in California. It is a common carrier pipeline corporation, subject to the jurisdiction of this Commission, and has tariffs for its California pipelines on file with this Commission.

B. Royal Dutch Petroleum Company

Royal Dutch is a public limited liability company organized under the laws of The Netherlands. Royal Dutch's principal place of business is The Hague, The Netherlands. Royal Dutch's sole activity is the ownership of a 60% interest in the Royal Dutch/Shell Group of Companies.

C. The "Shell" Transport and Trading Company, p.l.c.

Shell Transport is a public limited liability company incorporated in England and Wales. Shell Transport's principal place of business is London, England. Shell Transport's sole activity is the ownership of a 40% interest in the Royal Dutch/Shell Group of Companies.

D. Royal Dutch Shell plc

Royal Dutch Shell is a public limited liability company incorporated in England and Wales. Its principal place of business is The Hague, The

Netherlands. Royal Dutch Shell's primary object will be to carry on the business of a holding company.

III. Description of the Proposed Change in Control

A. Current Structure

Shell California is one of numerous companies, referred to as the Royal Dutch/Shell Group of Companies, in which Royal Dutch and Shell Transport, either directly or indirectly, own investments. Shell California is a wholly-owned subsidiary of Shell Pipeline Company, LP. Shell Pipeline Company LP, through various entities, is ultimately a wholly-owned subsidiary of Equilon Enterprises LLC doing business as Shell Oil Products US. Equilon Enterprises LLC, through various entities, is ultimately a wholly-owned subsidiary of Shell Oil Company. Shell Oil Company is among the Operating Companies wholly-owned by Shell Petroleum N.V. and The Shell Petroleum Company Limited which are, in turn, owned by Royal Dutch and Shell Transport.

The Royal Dutch/Shell Group of Companies grew out of a scheme of amalgamation between Royal Dutch and Shell Transport in 1906 and agreements from 1907 by which the scheme of amalgamation was implemented and pursuant to which the two companies agreed to merge their interests in the oil industry while remaining separate and distinct entities. Arrangements between Royal Dutch and Shell Transport provide, *inter alia*, that, notwithstanding variations in shareholdings, Royal Dutch and Shell Transport shall share in the aggregate net assets and in the aggregate dividends and interest received from the Royal Dutch/Shell Group of Companies in the proportion of 60% for Royal Dutch and 40% for Shell Transport. All of the Royal Dutch/Shell Group of Companies, including Shell California, engaged in various branches of oil, natural gas, chemicals, power generation and renewable energy as well as in

other businesses (the Operating Companies) are, directly or indirectly, wholly-owned by Shell Petroleum N. V. incorporated in The Netherlands and The Shell Petroleum Company Limited incorporated in England and Wales (collectively, the Group Holding Companies).² The Group Holding Companies are wholly-owned by Royal Dutch and Shell Transport. The arrangements between Royal Dutch and Shell Transport provide that Royal Dutch is entitled to have its nominees elected as a majority of the Board of Directors of the two Group Holding Companies, and Shell Transport is entitled to have its nominees elected to the balance of the boards. Through this arrangement, Royal Dutch and Shell Transport currently indirectly own and control Shell California.

B. Restructuring

On October 28 2004, the Royal Dutch Boards of Directors and the Shell Transport Board of Directors announced their agreement, in principle, to propose to their respective shareholders the unification of the Royal Dutch/Shell Group of Companies under a single parent company, Royal Dutch Shell. Pursuant to the final proposals for the recommended unification of Royal Dutch and Shell Transport announced on May 19 2005, the proposed restructuring is expected to be implemented through a public exchange offer by Royal Dutch Shell for the ordinary shares of Royal Dutch (the Tender Offer) and through the acquisition of Shell Transport by Royal Dutch Shell pursuant to a Scheme of Arrangement of Shell Transport under Section 425 of the Companies Act of England and Wales of 1985, as amended, (the Scheme of Arrangement). The terms of the transaction

² The Group Holding Companies also directly own the “Service Companies” that provide advice and services to the other Royal Dutch/Shell Group of Companies.

contemplate that Royal Dutch shareholders will be offered 60%, and Shell Transport shareholders offered 40%, of the ordinary share capital in Royal Dutch Shell. Upon completion of the transaction, Royal Dutch Shell will become the ultimate owner, and have control over, the Royal Dutch/Shell Group of Companies, including, indirectly, Shell California.

The announced restructuring is subject to numerous conditions and the review and approval of government agencies, including a review for potential anticompetitive effects under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). Under the HSR Act, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) have the authority to prevent or delay proposed mergers or acquisitions based on the potential anticompetitive effects.³ Prior to consummating a potential merger or acquisition, parties are required to file a “Pre-Merger Notification” containing certain information, including information on subsidiaries, products, revenues, and geographic markets, that relate to the proposed merger and the impacts the merger may have on competition. Where the information presented indicates that a proposed merger has the potential to have any anticompetitive effects, the FTC may elect to commence a comprehensive analysis of the proposed transaction and perform an in-depth review of the potential anti-competitive effects.⁴ In the present case, the FTC and DOJ have reviewed the Pre-Merger Notification filed in connection with the proposed restructuring, and on December 27, 2004, issued a notice of early termination of the HSR Act’s waiting period, indicating that the FTC and DOJ do

³ 15 U.S.C. 18a.

⁴ *See* 16 C.F.R. 803.

not believe that there is any potential for the restructuring to have any anticompetitive effects that would warrant performing the more comprehensive review.

In addition, the Scheme of Arrangement must be approved at a meeting to be convened by the High Court of England and Wales by a majority in number representing not less than 75% in value of those Shell Transport shareholders present and voting either in person or in proxy as well as being approved by the High Court of England and Wales. The shareholders of Shell Transport must pass resolutions to implement the Scheme of Arrangement, the shareholders of Royal Dutch must pass resolutions approving an implementation agreement, and at least 95% of the outstanding Royal Dutch ordinary shares (or a lesser percentage as Royal Dutch Shell, Royal Dutch, and Shell Transport may decide in accordance with applicable law) must be irrevocably tendered for acceptances in the Tender Offer.

C. Impact of Restructuring on Shell California

While there is a technical change in control of Shell California because Royal Dutch Shell will become the ultimate parent company of Shell California rather than both Royal Dutch and Shell Transport being the ultimate parent companies, there is no change in the ownership interest of Shell California's direct owners or the other intermediate parent companies. If all Royal Dutch shareholders accept the tender offer, Royal Dutch Shell will be owned by public shareholders in Royal Dutch and Shell Transport in the same proportions that those shareholders currently own the Royal Dutch/Shell Group of Companies.⁵

⁵ If not all Royal Dutch shareholders accept the tender offer, but the transaction is nevertheless completed, then immediately following completion of the transaction,

Footnote continued on next page

The proposed restructuring will not affect the relative ownership of the Royal Dutch/Shell Group of Companies in Shell California.

Applicants state that the restructuring does not require any change in Shell California's tariffs, nor will it affect its day-to-day management or operations. Shell California will continue to be operated by experienced and competent personnel, and continue to offer service pursuant to Commission-approved tariffs. There is no direct impact on Shell California except to the extent that it benefits from the expected benefits that provide the basis for the restructuring as referred to in IV below.

IV. Change in Control Resulting from the Restructuring is in the Public Interest

The Royal Dutch Boards and the Shell Transport Board (and applicants) believe that implementation of the transaction and the governance proposals announced on 28 October 2004 will deliver significant benefits, including:

- **Increased clarity and simplicity of governance:** A clearer and simpler governance structure, including a single, smaller board and a simplified senior management structure with a single non-executive Chairman, a single Chief Executive and clear lines of authority.

(i) the percentage of Royal Dutch Shell share capital held by former holders of Royal Dutch ordinary shares will be less than 60%, (iii) the percentage of Royal Dutch Shell share capital held by former Shell Transport shareholders will be more than 40% and (iii) non-tendering Royal Dutch shareholders will continue to hold a minority equity interest in Royal Dutch (with the majority interest in Royal Dutch being held by Royal Dutch Shell).

- **Increased management efficiency:** Increased efficiency of decision-making and management processes generally, including through the elimination of duplication and the centralization of functions.

- **Increased accountability:** Clear lines of authority and accountability, with the Executive Committee reporting through the Chief Executive to a single board with a single non-executive Chairman is expected to improve the accountability of the board and management to all shareholders.

- **Flexibility in issuing equity and debt:** A single publicly traded entity is expected to facilitate equity and debt issuances, including on an SEC-registered basis.

V. Request for Expedited, Ex Parte Approval

Applicants request that the Commission issue a decision on this application on an expedited and *ex parte* basis. The Commission's decision will allow a technical change in control of Shell California to occur, but will not directly impact the day-to-day management or operations of Shell California, the Commission's jurisdiction over Shell California, or Shell California's tariffs. The restructuring will be put to votes of the Royal Dutch and Shell Transport shareholders on June 28, 2005. It is expected to be completed in July 2005. Based on this timing and the absence of any substantive impact on Shell California, its tariffs, or this Commission's jurisdiction over Shell California, applicants request approval on an expedited, *ex parte* basis and a decision no later than June 28, 2005. Applicants understand that this may be a relatively short time-frame. However, applicants declare they were unable to file this application earlier due to the complexities and logistics associated with Royal Dutch, Shell Transport, and Royal Dutch Shell being international companies and because

some of the information required for this application had to be obtained from Europe.

VI. Information Submitted in Compliance with CEQA

Under the California Environmental Quality Act (CEQA), the governmental agency responsible for taking discretionary action in reviewing and approving projects is required to consider the environmental effects of the proposed project.⁶ Under the CEQA guidelines adopted by this Commission in Rule 17.1, CEQA review applies only to projects which have the potential for causing a significant effect on the environment. “Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”⁷ The technical change in control at issue here will not have a significant effect on the environment and so is exempt from CEQA.

We have consistently held that where approval for a change in control is required due to restructuring of a utility’s parent companies, and the change in control does not affect the utility’s tariffs or operations, such approvals are exempt from CEQA. In Application 02-04-044 (A.02-04-044 of the ConocoPhillips Application), Phillips Petroleum Company (Phillips) and ConocoPhillips sought Commission approval to transfer control over Union Pipeline Company (California) (UNOCAP), a Commission-regulated common carrier intrastate oil pipeline company, from its current indirect owner, Phillips, to ConocoPhillips. As with the proposed restructuring, the change in control resulted from Phillips

⁶ Cal. Pub. Res. Code Section 21080.

⁷ 14 California Code of Regulations Section 15-61(b)(3).

becoming a wholly-owned subsidiary of ConocoPhillips rather than being the ultimate parent company.⁸ As noted in Decision 02-07-025, approving A.02-04-044, the change in control would not affect UNOCAP's tariffs and would not result in any changes to UNOCAP's day-to-day operations.⁹ As a result, we determined that the application qualified for an exemption from CEQA pursuant to Section 15061(b)(3) of the CEQA guidelines.¹⁰ We made identical findings in A.02-08-032, in which SureWest Communications sought to transfer control over several California regulated public utilities from the existing California corporation to a newly formed Delaware corporation¹¹ and A.02-09-006, in which Alberta Energy Company, Ltd. sought to transfer control over Wild Goose Storage, Inc. to EnCana Corporation.¹² As with the ConocoPhillips application, those applications did not impact the affected utility's tariffs or day-to-day operations.

As noted above, the change in control of Shell California is the result of the restructuring of Shell California's ultimate parent companies. The change in control will not affect Shell California's tariffs or its day-to-day management or operations. As a result, it can be seen with certainty that the change in control will have no significant effect on the environment. This application is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA guidelines.

⁸ D.02-07-025, mimeo at 2-3.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6.

¹¹ D.02-12-001 mimeo at 4.

¹² D.03-06-069, mimeo at 13-14.

VII. Categorization and Need for Hearings

This application should be categorized as a ratesetting proceeding. There are no protests; there is no need for a hearing.

VIII. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is waived.

IX. Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Shell California is a pipeline corporation as defined in Public Utilities Code Section 228, and operates as a common carrier intrastate pipeline company between points in California under tariffs on file with the Commission.
2. Shell California is a subsidiary of Royal Dutch and Shell Transport.
3. Royal Dutch and Shell Transport are merging into Royal Dutch Shell, which will have Shell California as a subsidiary.
4. The merger is expected to simplify governance and management efficiency, leading to reduced expenses.
5. After the merger, Shell California will continue to be operated in accordance with its Commission-approved tariffs; no changes in terms and conditions of service or rates are requested as part of this joint application.
6. This transfer of control will have no effect on the environment because Shell California will continue to be operated as it is now.

Conclusions of Law

1. The proposed transaction is in the public interest.
2. To the extent the joint application seeks authorization for a change of control pursuant to Public Utilities Code Section 854, the application should be approved.
3. Article 2.5 of the Commission's Rules of Practice and Procedure ceases to apply to this proceeding.
4. This transfer of control does not require further CEQA review by the Commission.
5. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The application for authority to transfer control of Shell California Pipeline Company LLC from Royal Dutch Petroleum Company and the "Shell" Transport and Trading Company PLC pursuant to Public Utilities Code Section 854 is approved.
2. Applicants shall notify the Director of the Commission's Energy Division in writing of the transfer of authority as authorized herein, within 30 days of the date of the transfer. A true copy of the instruments of transfer shall be attached to the notification.
3. The authority granted herein shall expire if not exercised within one year of the date of this order.

4. Application 05-05-026 is closed.

This order is effective today.

Dated _____, at San Francisco, California.